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August 3, 2009

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
Bldg. F, 3rd Floor
Austin, Texas 78711-3087

VIA HAND DELIVERY

Re: In the Matter of Application No. 14-1318C by the San Angelo Water Supply
Corporation For Amendment to Certificate of Adjudication No. 14-1318
TCEQ Docket No. 2008-1617-WR

Dear Ms. Castañuela:

Enclosed for filing on behalf of my client, the City of San Angelo, please find the original and eight (8) copies of Response To Requests For Contested Case Hearing in the above-referenced matter. Please file stamp one copy and return it to me via my messenger.

If you have any questions, please do not hesitate to contact me at (512) 322-5810.

Sincerely,


Martin C. Rochelle

MCR/ldp
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ENCLOSURE

cc: Service List
Mr. Will Wilde
Mr. Tom Massey
Mr. Tim Brown
Mr. Robert J. Brandes

CHIEF CLERKS OFFICE
2009 AUG - 3 PM 4: 28
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

DOCKET NO. 2008-1617-WR

2009 AUG -3 PM 4: 28

APPLICATION NO. 14-1318C BY SAN § BEFORE THE TEXAS COMMISSION
ANGELO WATER SUPPLY §
CORPORATION FOR AMENDMENT § ON
TO CERTIFICATE OF ADJUDICATION §
NO. 14-1318 § ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

On behalf of the San Angelo Water Supply Corporation, the City of San Angelo (herein referenced interchangeably as "San Angelo" or the "Applicant") submits this response to requests made to the Texas Commission on Environmental Quality (the "TCEQ") for a contested case hearing on the above-referenced application, and would respectfully show the Commissioners the following:

I. BACKGROUND

In 1926, the Supreme Court of Texas attempted to remedy the dilemma created by the State's use of competing doctrines to manage its surface water resources—riparianism and prior appropriation.¹ In *Motl v. Boyd*, the Supreme Court determined that the way to resolve the inherent tensions between the two approaches was to allocate water between riparian owners and appropriators based on the types of flows in the watercourse.² Riparians, the court concluded, had rights only to the normal flow of the river.³ In order to protect riparians' rights to these flows and to combat the destructive forces of floods in the state, the court found support in the pertinent statutes to consider storm and flood flows to be beyond the rights of riparians, and thus subject to appropriation by the State for beneficial uses.⁴ Thus, the *Motl* distinction emerged in Texas water law as a means of fostering accommodation between two hostile systems: to riparians would go the *normal flow* of a watercourse; to appropriators would go the *storm and flood flows*.⁵

Permit No. 1949 was issued to San Angelo by the Board of Water Engineers in February 1960—a time when the State continued to manage its surface waters under the two incompatible

¹ *Motl v. Boyd*, 286 S.W. 458, 471-74.

² *Id.*

³ *Id.* at 468.

⁴ *Id.* at 474.

⁵ *In re the Adjudication of the Water Rights of the Upper Guadalupe Segment of the Guadalupe River Basin*, 642 S.W.2d 438, 441 (Tex. 1982) (citing to *Motl v. Boyd*, 286 S.W. at 458).

doctrines, making the *Motl* distinctions still quite relevant.⁶ Permit No. 1949 allowed San Angelo to impound 170,000 acre feet of storm and flood flows of the Middle and South Concho Rivers and Spring Creek. Specifically, it provided that San Angelo could store only storm and flood waters of the Middle and South Concho Rivers and Spring Creek, subject to all the rights of prior appropriators and lawful diverters downstream (the “Storm Flows Provision” of Permit No. 1949). In addition, it required “the free passage of the normal flow through the [Twin Buttes Reservoir] dam at all times.” Permit No. 1949 clearly was issued based on the premise that, because of the State’s “no prejudice” rule with respect to downstream riparians, the normal flows of a watercourse—*i.e.*, the flows that had been reserved exclusively for riparians—could not be impeded by any appropriative rights. Only the storm and flood flows of a watercourse were subject to prior appropriation under the dual system employed by the State at that time.

The Water Rights Adjudication Act of 1967 (the “1967 Act”)⁷ changed all of this. No longer were only storm and flood flows subject to prior appropriation, but all waters in the watercourse were incorporated into the appropriation system, save and except only water being beneficially used for domestic and livestock purposes by riparians.⁸ As the Texas Water Rights Commission (“TWRC”) noted in its Modified Final Determination of the Claims of Water Rights in the Concho River Segment of the Colorado River Basin, 1976 (the “Modified Final Concho Determination”):

*The allocation of water between users during times of shortage has confronted and confounded every administrator of water resources. Continual division of a stream into normal flow and storm and flood flow is a difficult engineering problem. If the administrator is to deal with not only this division but also the problem of allocating water between holders of certificates with a time priority and those without a time priority, particularly with the small quantity of water available in this segment, a wholly unworkable scheme will have been created. Therefore, the [TWRC] has merged appropriative rights and rights recognized under [Section 11.303, Water Code] into a common system as an equitable and workable means of administering the water rights adjudicated and has placed all recognized riparian claimants on a time priority with statutory water rights.*⁹

As the TWRC made abundantly clear, riparian claims (except for domestic and livestock uses) were extinguished by the Water Rights Adjudication Act of 1967, and were as a result reduced to a paper right reflecting the maximum extent to which water had been put to beneficial use during the applicable review period. The distinction between a watercourse’s normal flows and storm or flood flows became moot under this singular approach. Thus, because of the 1967

⁶ It is a striking coincidence that the disputed waters at the center of the *Motl* decision were waters from the Middle and South Concho Rivers and Spring Creek.

⁷ TEX. WATER CODE ANN. §§ 11.301 - .341 (Vernon 2008).

⁸ *Id.* § 11.301(l).

⁹ Modified Final Concho Determination, ¶ 11, at 7 – 8 (emphasis added).

Act, the *Mott* distinction was no longer needed to effectively catalogue and prioritize water within a watercourse.¹⁰

In 1973, in response to the 1967 Act, the TWRC began adjudication proceedings for all claims to waters in the Concho River segment of the Colorado River that were not claims based on domestic and livestock uses.¹¹ The 51st District Court of Tom Green County, following a review of the Modified Commission Order on Concho River Claims, issued a final decree on the adjudication. Pursuant to the terms of the 1967 Act, the TWRC issued a certificate of adjudication to San Angelo based on its claims to State water originating from Permit No. 1949—Certificate of Adjudication No. 14-1318 (“COA 14-1318”).¹² COA 14-1318 reflects the final, adjudicated right of San Angelo to water that it was previously authorized to put to beneficial use under Permit No. 1949.¹³

While the storm and flood flows language found in Permit No. 1949 was appropriately abandoned in COA 14-1318, the reference to “normal flows” was not.¹⁴ To date, this *Mott*-era anachronism remains a part of COA 14-1318. San Angelo has not been the only appropriator in Texas faced with the challenge of quantifying “normal flows” in a watercourse. Noting the quixotic nature of the *Mott* distinction, the Supreme Court of Texas observed that “the [*Mott*-inspired] line [between normal flows and flood flows] was amorphous, and engineers and hydrologists had problems determining the ordinary flow of a stream that flowed only when it rained. Mean flow, average flow, and ordinary flow are measures that have not been judicially addressed.”¹⁵

Thus, in practical terms, “normal flows” has little meaning. In Texas water rights law, the term today has no place. Accordingly, in an effort to create a more workable standard for COA 14-1318, that, in the process, in all probability more closely follows the original intent of the TWRC and the 1967 Act than does the current language in Special Condition 5.C., San Angelo sought to appropriately amend COA 14-1318.

II. PROCEDURAL HISTORY

On March 30, 2005, San Angelo filed Application No. 14-1318C with the TCEQ so as to amend Special Condition 5.C. to clarify that normal stream flow would be passed through the Twin Buttes Reservoir dam when called upon by downstream senior and superior diverters (the

¹⁰ *Guadalupe River Basin*, 642 S.W.2d at 441.

¹¹ The Modified Commission Order on Concho River Claims.

¹² Certificate of Adjudication No. 14-1318 is included in the appendices hereto as Item No. 3.

¹³ TEX. WATER CODE ANN. § 11.323(a) (Vernon 2008).

¹⁴ COA 14-1318 Special Condition 5.C. currently requires that “[a] conduit shall be constructed in the aforesaid dam with the inlet at elevation 1883.5 feet above mean sea level, having an opening of not less than five feet in diameter and equipped with a regulating gate for the purpose of permitting the free passage of the *normal flow* through the gate at all times and the passage of those waters to which the Department may determine lower appropriators are entitled.”

¹⁵ *Guadalupe River Basin*, 642 S.W.2d at 441.

"Application" or "Application 14-1318C"). TCEQ staff declared the Application to be administratively complete on July 12, 2005.

Notice of the Application was mailed to downstream water rights holders within the Colorado River Basin on August 25, 2005, and notice of the same was published on September 2, 2005. Accordingly, requests for a contested case hearing on the Application were due to the TCEQ Chief Clerk's office no later than October 3, 2005. As noted below, several requests for contested case hearing were submitted.

On October 12, 2005, TCEQ staff requested that San Angelo submitted a "scientific definition" of normal flow. After consulting with its hydrogeologic consultant, San Angelo reported to TCEQ staff that it knew of no scientifically accepted definition of the term. San Angelo advised TCEQ that it has been in discussions with several downstream senior and superior appropriators in the Concho River Basin in effort to resolve their respective differences on the Application, but was unable to find a way to resolve the impasse. Nevertheless, San Angelo proposed language to TCEQ staff that it felt would accommodate the concerns of those who had protested the application. Specifically, it suggested that, instead of what was originally proposed in the Application, Special Condition 5.C. be amended to require, *inter alia*, "the free passage of inflows to Twin Buttes Reservoir through the conduit in amounts to which lower appropriators are entitled as determined by the watermaster or the commission based on streamflow gages located on upstream watercourses that the watermaster or commission considers appropriate for making such determinations." On February 9, 2006, TCEQ staff acknowledged San Angelo's amendment to Application 14-1318C, and determined that the changes would require republication and notice of the Application. On April 5, 2006, TCEQ staff declared the Application as amended to be administratively complete.

On April 18, 2006, a revised notice of the amended Application was mailed to all downstream senior and superior appropriators, and notice of the same was published on April 28, 2006. Accordingly, requests for a contested case hearing on the Application were due to the TCEQ Chief Clerk's office no later than May 30, 2006. Again, several requests for hearing were submitted to TCEQ in response.

On July 27, 2006, TCEQ staff informed San Angelo that it was recommending a special condition be included in the Draft Permit to require the development of an accounting plan (the "San Angelo Water Rights Accounting Plan"). On March 17, 2008, TCEQ staff issued a draft permit for Certificate of Adjudication No. 14-1318C (the "Draft Permit"). San Angelo submitted the San Angelo Water Rights Accounting Plan on May 5, 2008, after much discussion and work with TCEQ staff on the same. On July 22, 2008, TCEQ staff informed San Angelo that the San Angelo Water Rights Accounting Plan was approved. On April 1, 2009, TCEQ staff issued a revised Draft Permit.

On July 24, 2009, San Angelo received notice that the above-referenced matter would be considered by the Commission at the August 26, 2009 agenda. San Angelo hereby submits this response to requests made to the TCEQ for a contested case hearing on the Application pursuant to Title 30, Section 55.254 of the Texas Administrative Code.

III. DETERMINATION OF AFFECTED PERSONS

TCEQ rules make clear that a contested case hearing can only be requested by 1) the TCEQ Commissioners, 2) the TCEQ Executive Director, 3) the Applicant, and 4) any affected person.¹⁶ An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application.¹⁷ An interest common to members of the general public does not qualify as a personal justiciable interest.¹⁸ Accordingly, a request for a contested case hearing must include a brief, but specific, description of the person's location and distance relative to the activity that is the subject of the Application.¹⁹ In addition, the person must do more than just provide a conclusory statement in the request that he or she will be harmed by the proposed change. The person must describe, briefly, but specifically, how and why he or she will be affected by the change proposed in the Application.²⁰

Persons claiming to be affected persons must also submit their hearing requests in writing to the Chief Clerk within the time period specified in the notice.²¹ For purposes of the Application, the notice directed all potential requestors to submit their requests for a contested case hearing on the matter to the Chief Clerk within the 30-day period following the publication date. Notice of the Application as filed was published on September 2, 2005. Notice of the Application as amended was published on April 28, 2006. Thus, all timely hearing requests must have been received following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005, or, alternatively, following the Chief Clerk's issuance of mailed notice on April 8, 2006 and not later than May 30, 2006.²² All such requests not filed within these two time periods are not timely and thus cannot be processed by the Chief Clerk.²³

When determining whether an individual or entity is an "affected person," all relevant factors are considered by the Commission, including: 1) whether the interest claimed is one protected by the law under which the application will be considered; 2) distance restrictions or other limitations imposed by law on the affected interest; 3) whether a reasonable relationship exists between the interest claimed and the activity regulated; 4) the likely impact of the regulated activity on the health, safety, and use of property of the person; and 5) the likely impact of the regulated activity on use of the impacted natural resource by the person.²⁴

¹⁶ 30 TEX. ADMIN. CODE § 55.251(a) (2009).

¹⁷ *Id.* § 55.103.

¹⁸ *Id.*

¹⁹ *Id.* § 55.251(c)(2).

²⁰ *Id.*

²¹ *Id.* §§ 55.251(b), (d), .254(a).

²² *Id.* §§ 55.251(b), (d).

²³ *Id.* §§ 55.251(f)(1), .254(a).

²⁴ *Id.* § 55.256(c).

IV. EVALUATION OF HEARING REQUESTS FOR APPLICATION 14-1318C

1. Wilburn Bailey Estate

August F. Haechten submitted a request for a contested case hearing on Application 14-1318C purportedly on behalf of the Wilburn Bailey Estate. Nothing in the request, however, indicates that August F. Haechten is authorized to act, or speak, on behalf of the Wilburn Bailey Estate. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1382—is held in the name of the Wilburn Bailey Estate, not August F. Haechten. Accordingly, it is not clear that the interests of the Wilburn Bailey Estate have been properly, or accurately, presented in the hearing request.

While this request appears to have been timely submitted, it nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, no daytime telephone number is provided for the Wilburn Bailey Estate in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1382. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Wilburn Bailey Estate request should not be granted.

2. Carol D. Blacklock

Carol D. Blacklock submitted a request for a contested case hearing on Application 14-1318C that fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Carol D. Blacklock in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1399—the certificate referenced in the request as being the affected water right. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Carol D. Blacklock's request should not be granted.

3. Lewis J. Buck

Lewis J. Buck submitted two requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on October 4, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by October 3, 2005. Accordingly, this request is untimely.

The second request filed by Lewis J. Buck was received by the Chief Clerk on May 17, 2006. While this request appears to have been timely submitted, it, along with the untimely submitted October 4, 2005 request, nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, Mr. Buck provides nothing in his request that gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1363—the certificate referenced in his request as being the affected water right. Neither request identifies any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Lewis J. Buck's requests should not be granted.

4. Lonnie L. Buck, III

Lonnie L. Buck, III submitted a request for a contested case hearing on Application 14-1318C that fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Most significantly, Lonnie L. Buck, III complains that the Application will impair his water right—Certificate of Adjudication No. 14-1362. TCEQ records, however, indicate that Lonnie L. Buck, III is not the owner of Certificate of Adjudication No. 14-1362. This right is held in the name of Lewis Buck. Nothing in Lonnie L. Buck, III's hearing request indicates any authority to speak on behalf of Lewis Buck, or to otherwise claim an interest in Certificate of Adjudication No. 14-1362.

Furthermore, Lonnie L. Buck, III's request fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in this request gives any indication of how, or why, the Application will affect any justiciable interest held by Mr. Buck. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Lonnie L. Buck, III's request should not be granted.

5. Fred Campbell

Fred Campbell submitted a request for a contested case hearing on Application 14-1318C that fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Fred Campbell in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Mr. Campbell's purported domestic and livestock riparian rights. Furthermore, Mr. Campbell provides no indication in his request that would indicate his location and distance relative to the Twin Buttes Reservoir dam. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Fred Campbell's request should not be granted.

6. Van W. Carson

Van W. Carson submitted a request for a contested case hearing on Application 14-1318C that fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in Mr. Carson's request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1338—the water right that is purportedly impacted by the change proposed in the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Van W. Carson's request should not be granted.

7. Gena M. Reichert Day Estate

Greg Schwertner submitted a request for a contested case hearing on Application 14-1318C purportedly on behalf of the Gena M. Reichert Day Estate. Nothing in the request, however, indicates that Greg Schwertner is authorized to act, or speak, on behalf of the Gena M. Reichert Day Estate. In fact, Mr. Schwertner identifies himself as a "tenant," and a representative of the "Gena Day Estate." TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1358—is held in the name of Gena M. Reichert Day, not Greg Schwertner. Accordingly, it is not clear that the interests of the Gena M. Reichert Day Estate have been properly, or accurately, presented in the hearing request.

Mr. Schwertner's request nevertheless also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for the Gena M. Reichert Day Estate in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1358. This request is devoid of any articulated justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Gena M. Reichert Day Estate's request should not be granted.

8. Wanda and W. G. Dishroon Estate

Dwayne Dishroon submitted three requests for a contested case hearing on Application 14-1318C, purportedly on behalf of the Wanda and W. G. Dishroon Estate. Nothing in the requests, however, shows that Dwayne Dishroon is authorized to act, or speak, on behalf of the Wanda and W. G. Dishroon Estate. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1364—is held in the name of Wanda and W. G. Dishroon, not Dwayne Dishroon. Accordingly, it is not clear that the interests of the Wanda and W. G. Dishroon Estate have been properly, or accurately, presented in the hearing requests.

Of the three requests for a contested case hearing on Application 14-1318C submitted, one request was received by the Chief Clerk on July 20, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005, to be considered a valid request. Accordingly, this request is untimely.

None of the requests satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, no daytime telephone number is provided for the Wanda and W. G. Dishroon Estate in either request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1364—the certificate referenced in the request as being the affected water right. Neither request identifies any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Wanda and W. G. Dishroon Estate requests should not be granted.

9. Thomas L. Evridge

Thomas L. Evridge submitted three requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on July 20, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005, to be considered a valid request. Accordingly, this request is untimely.

None of the requests satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect Mr. Evridge, nothing in his requests gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1369—the certificate referenced in the requests as being the affected water right. Mr. Evridge fails to identify any justiciable interest affected by the Application in any of his requests. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Thomas L. Evridge's requests should not be granted.

10. Samie L. Ewald

Samie L. Ewald's request for a contested case hearing on Application 14-1318C fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, he provides no daytime telephone number in his request, as is required by rule. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in his request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1392—the certificate referenced in the request as being the affected water right. Mr. Ewald simply has identified no justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Samie L. Ewald's request should not be granted.

11. Leonard Grantham, Jr.

Leonard Grantham, Jr. submitted a request for a contested case hearing on Application 14-1318C that was received by the Chief Clerk on October 4, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received

by the Chief Clerk by October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Leonard Grantham, Jr. in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1361—the certificate referenced in the request as being the affected water right. Mr. Grantham simply has identified no justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Leonard Grantham, Jr.'s request should not be granted.

12. Billy J. Helwig

Billy J. Helwig submitted a request for a contested case hearing on Application 14-1318C that was received by the Chief Clerk on October 4, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Billy J. Helwig in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1380—the certificate referenced in the request as being the affected water right. Mr. Helwig simply has identified no justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Billy J. Helwig's request should not be granted.

13. Jennifer A. Willberg Hoelscher

Jennifer A. Willberg Hoelscher submitted three requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on July 20, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must

have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005, to be considered a valid request. Accordingly, this request is untimely.

None of Ms. Hoelscher's requests, however, substantially complies with Title 30, Section 55.251(c) of the Texas Administrative Code. Most significantly, Jennifer A. Willberg Hoelscher complains that the Application will impair her water right—Certificate of Adjudication No. 14-1384. TCEQ records, however, indicate that Jennifer A. Willberg Hoelscher is not the owner of Certificate of Adjudication No. 14-1384. This right is held in the name of Ben Willberg. Nothing in Ms. Hoelscher's hearing request demonstrates any authority to speak on behalf of Ben Willberg, or to otherwise claim an interest in Certificate of Adjudication No. 14-1348.

These three requests each fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code for other reasons, as well. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestors, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1384—the certificate referenced in the request as being the affected water right. Simply stated, not one of the requests succeeds in identifying any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Jennifer A. Willberg Hoelscher's requests should not be granted.

14. Steven H. Hoelscher

Steven H. Hoelscher submitted three requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on July 20, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

Not one of Mr. Hoelscher's requests, however, substantially complies with Title 30, Section 55.251(c) of the Texas Administrative Code. Significantly, he complains that the Application will impair his water right—Certificate of Adjudication No. 14-1384. But TCEQ records indicate that Steven H. Hoelscher is not the owner of Certificate of Adjudication No. 14-1384. This right is held in the name of Ben Willberg. Nothing in Mr. Hoelscher's hearing requests demonstrates any authority to speak on behalf of Ben Willberg, or to otherwise claim an interest in Certificate of Adjudication No. 14-1348.

Notwithstanding these substantive defects in his hearing requests, Mr. Hoelscher's three requests still fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestors, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1384—the certificate referenced in the request as being the affected water right—or the referenced domestic and livestock riparian right that is purportedly impaired by the Application. Mr. Hoelscher's statement regarding his opinions and observations about the Concho River make clear his displeasure with current conditions in the river, but nothing in the statement describes how or why the change proposed in Application 14-1318C will impair any justiciable interest he may have. Simply stated, none of the requests succeed in identifying any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Steven H. Hoelscher's requests should not be granted.

15. Hudson Management, Ltd.

Hudson Management, Ltd., submitted two requests for a contested case hearing on Application 14-1318C. Neither request satisfies the substantive requirements of Title 30, Section 251 of the Texas Administrative Code, however. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1340—the certificate referenced in the request as being the affected water right. Neither request identifies any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Hudson Management, Ltd.'s requests should not be granted.

16. Douglas John

Douglas John submitted two requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on July 20, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

Substantively, however, Mr. John's requests still fail to satisfy the requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, Mr. John provides nothing in his requests that gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1372—the water right described as being purportedly impaired by the change sought in the Application. He simply has failed to identify any interest that will be affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Douglas John's requests should not be granted.

17. A. J. Jones, Jr.²⁵

A. J. Jones, Jr., submitted five requests for a contested case hearing on Application 14-1318C. Of these, three requests were submitted prematurely. The first request was received by the Chief Clerk on May 6, 2005. The second request was received by OPA on May 10, 2005. There is no clear indication on the request itself when, or whether, this request was received by the Chief Clerk, but it presumably would have been received somewhere between May 7, 2005 and May 9, 2005. The third request was received by the Chief Clerk on May 10, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, these requests must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered valid requests. Accordingly, these requests are each untimely.

With respect to the two requests for hearing on Application 14-1318C submitted by Mr. Jones that were apparently received by the Chief Clerk on September 12, 2005 and May 18, 2006, respectively, they each nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

Specifically, in the request that was received by the Chief Clerk on September 12, 2005, Mr. Jones provides nothing that gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1397—the water right he describes as being purportedly impaired by the change sought in the Application—or any domestic and livestock riparian right he may have. Instead of describing briefly, but specifically, how the change proposed in the Application will impair his water rights, he complains about the use of water from Lake Nasworthy Reservoir. Even then, he gives no indication as to

²⁵ A. J. Jones, Jr.'s hearing request submission was made on behalf of his personal interests and on behalf of the Concho River Basin Water Conservancy Association. Since Mr. Jones distinguishes these two interests in his request, San Angelo will respond to the Concho River Basin Water Conservancy Association's requests separately below.

why he is concerned about the supposed impacts the Application would have on Lake Nasworthy Reservoir, nor how those supposed impacts would adversely affect him. In addition, he complains about the absence of the storm and flood flows provision that originally appeared in San Angelo's Permit No. 1949. But, as discussed above in detail, this provision was appropriately abandoned in COA 14-1318 because of the legal changes brought about by the 1967 Act. On this point, Mr. Jones' concern is but a pure question of law—one resolved many years ago, first by the Texas Legislature,²⁶ then by the TWRC as it carried out the Legislature's command to merge riparian rights into the prior appropriation method of surface water rights management.²⁷

In the same request, Mr. Jones references other correspondence that he previously submitted to TCEQ, and he asks us to consider his comments in those letters, as well. Specifically, he appears to be referencing a letter dated May 6, 2005, which was apparently sent to the Chief Clerk in triplicate. These are the letters described in the beginning paragraph to this response to Mr. Jones' hearing request. As discussed above, each of the three were submitted prematurely to be considered a valid request for Application 14-1318C. Mr. Jones refers also to his letter dated July 1, 2005 that was received by the Chief Clerk on five separate occasions: July 5, 2005, July 7, 2005, July 11, 2005, September 12, 2005, and again on September 12, 2005. This particular letter was, by its express terms, drafted to be a hearing request for a different permit amendment application—not Application 14-1318C. None of these eight pieces of correspondence would appear to be validly presented to the Commission as requests for hearing on this Application. Regardless, not one of the letters would, on its own right, satisfy the requirements of Title 30, Section 55.251 of the Texas Administrative Code.

Specifically, in his correspondence dated May 6, 2005, Mr. Jones provides no explanation whatsoever as to how the Application would impair his rights under Certificate of Adjudication No. 14-1397, or any domestic and livestock riparian right he may enjoy. Mr. Jones, thus, describes no justiciable interest that is affected by the Application.

As is the case with his May 6, 2005 correspondence, Mr. Jones' July 1, 2005 correspondence fails to convey any information that would suggest how and why he would be impacted by the change sought in Application 14-1318C. In the letter, he raises five distinct issues—all of which address his purported concern for the change sought in the application that is the subject of TCEQ Docket No. 2008-1616-WR. It is important to recognize this distinction, because Mr. Jones' comments in his July 1, 2005 letter were addressing a different application entirely. Thus, they provide no additional insight into how and why the change proposed in Application 14-1318C will affect any justiciable interest he may have. In the letter, he suggests that his downstream senior water right gives him a right to the impounded waters in Twin Buttes Reservoir, and complains that changes proposed by San Angelo will interfere with his ability to rely on stored water to satisfy his demands. Mr. Jones' issue here is wholly irrelevant for multiple reasons.

²⁶ *Guadalupe River Basin*, 642 S.W.2d at 439-445.

²⁷ Modified Commission Order on Concho River Claims.

First, the Application proposes no change that would alter the classification of waters rightfully diverted and stored in Twin Buttes Reservoir pursuant to the rights provided in COA 14-1318. Second, Mr. Jones has apparently been misinformed about his purported right, as a downstream senior appropriator, to water stored—or impounded—in Twin Buttes Reservoir. Nothing in Mr. Jones' water right—Certificate of Adjudication No. 14-1397—or any domestic and livestock riparian right he may enjoy, gives him a right to water that has been rightfully diverted and stored in Twin Buttes Reservoir. Absent any such clear, expressly granted right in either Certificate of Adjudication No. 14-1397 or COA 14-1318, Mr. Jones has no right under Texas law to the water rightfully diverted and stored by San Angelo in Twin Buttes Reservoir. Mr. Jones has articulated no justiciable interest in this point that is affected by the Application.

Mr. Jones next complains again about the storage of released water from Twin Buttes Reservoir into Lake Nasworthy Reservoir. Nothing in Application 14-1318C proposes any alteration of San Angelo's legal rights or obligations relating to released water from Twin Buttes Reservoir. Mr. Jones has articulated no justiciable interest in this point that is affected by the Application.

Mr. Jones' third point is merely another grievance relating to the management of water impounded in Lake Nasworthy Reservoir. San Angelo does not propose any change in Application 14-1318C that would alter how diverted and impounded water is managed in Lake Nasworthy Reservoir. Mr. Jones has failed to articulate any justiciable interest here that is affected by the Application.

Mr. Jones, in his fourth point, addresses the matter of changing the inlet structure elevation referenced in COA 14-1318. That change, of course, is sought in an application that is the subject of TCEQ Docket No. 2008-1616-WR, not this Application. Therefore, it has no relevance in the context of Application 14-1318C. Nevertheless, Mr. Jones complains that the change will affect his and other downstream senior and superior water rights holders, but he gives no explanation how the requested change on paper (correcting the inlet structure elevation in COA 14-1318 to reflect the as-built elevation) will translate into any change for Mr. Jones. The inlet structure elevation has been the same for at least 46 years, and nothing in Application 14-1318C proposes to change that fact. Additionally, Mr. Jones wholly ignores the role that the Watermaster plays in ensuring that his and other downstream senior and superior water right holders' ability is protected to beneficially use water to which they are each entitled. Given the important role of the Watermaster on the Concho River, and the fact that nothing in Application 14-1318C would change what has been the case for almost one-half century, it is far from clear how Mr. Jones has any right that is affected by the Application. Accordingly, Mr. Jones, too, has failed to articulate any justiciable interest here that is affected by the Application.

Mr. Jones' fifth concern also has no relevance in Application 14-1318C. San Angelo does not request in this Application an additional diversion point. He has articulated no justiciable interest that is affected by the Application.

In none of his requests has A. J. Jones, Jr. briefly or specifically described how and why the change proposed in the Application 14-1318C will affect Certificate of Adjudication No. 14-1397, or any domestic and livestock riparian right he may enjoy, as is clearly required of him in Title 30, Section 55.251(c)(2) of the Texas Administrative Code. His requests, though prolific in number, wholly fail to identify any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

A. J. Jones, Jr.'s requests should not be granted.

18. John C. Ketzler

John C. Ketzler submitted three requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on July 20, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

Each of his requests nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1376—the certificate referenced in the request as being the affected water right. None of the requests identifies any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

John C. Ketzler's requests should not be granted.

19. Lucy and Bernie Mika

Lee Ann Mika Mendez submitted a request for a contested case hearing on Application 14-1318C purportedly on behalf of Lucy and Bernie Mika. Ms. Mendez signed the request with the notation "POA." It is not clear what Ms. Mendez intended by this notation. In the event that Ms. Mendez has a power of attorney for Lucy and Bernie Mika, she should be required to demonstrate that, in fact, she has the legal authority to act on behalf of the Mika's on this matter. Otherwise, nothing in the request indicates that Lee Ann Mika Mendez is authorized to act, or speak, on behalf of Lucy and Bernie Mika. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1379—is held in the name of Lucy and

Bernie Mika, not Lee Ann Mika Mendez. Accordingly, it is not clear that the interests of Lucy and Bernie Mika have been properly, or accurately, presented in the hearing request.

While this request appears to have been timely submitted, it nevertheless fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Lucy and Bernie Mika in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1379. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Lucy and Bernie Mika's request should not be granted.

20. Fred Mueller

Fred Mueller submitted a request for a contested case hearing on Application 14-1318C that was received by the Chief Clerk on July 15, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

Furthermore, Mr. Mueller's request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, he provides no daytime telephone number, as is specifically required by Subsection (c)(1). More significantly, however, Mr. Mueller fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in this request gives any indication of how, or why, the Application will affect Mr. Mueller's domestic and livestock riparian rights. Such an explanation would be particularly helpful given Mr. Mueller's stated concern for water rights *upstream* of the Twin Buttes Reservoir dam. He has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Fred Mueller's request should not be granted.

21. Kevin L. Noland

Kevin L. Noland submitted two requests for a contested case hearing on Application 14-1318C. While these requests appear to have been timely submitted, they nevertheless fail to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, Mr. Noland fails to describe how and why the change proposed in the Application will affect him. Nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1371. Mr. Noland has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Kevin L. Noland's requests should not be granted.

22. City of Paint Rock

The City of Paint Rock submitted a request for a contested case hearing on Application 14-1318C that fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. No daytime telephone number is provided in the request, as is specifically required by Subsection (c)(1). More significantly, however, the City fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1388, particularly given the noted distance of 50 miles that separate the City's location relative to the Twin Buttes Reservoir dam. The City of Paint Rock has not described any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The City of Paint Rock's request should not be granted.

23. Darrell Rushing

Darrell Rushing submitted three requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on July 22, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

None of his requests, however, substantially complies with Title 30, Section 55.251(c) of the Texas Administrative Code. Mr. Rushing fails to comply with the clear requirements

of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1371. Mr. Rushing has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Darrell Rushing's requests should not be granted.

24. Schneeman Investment Corp.

The Schneeman Investment Corp. submitted two requests for a contested case hearing on Application 14-1318C that each fail to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, the Schneeman Investment Corp. fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect it or its stated interest in Certificate of Adjudication No. 14-1349. The Schneeman Investment Corp. has not described any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Schneeman Investment Corp.'s requests should not be granted.

25. Kenneth Schwartz

Kenneth Schwartz filed four requests for a contested case hearing on Application 14-1318C. While these requests appear to have been timely submitted to the Chief Clerk, they each nevertheless fail to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, he fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in his requests gives any indication of how, or why, the Application will affect Certificates of Adjudication No. 14-1351 and 14-1354. Mr. Schwartz has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Kenneth Schwartz's requests should not be granted.

26. Kent C. Schwartz

Kent C. Schwartz submitted a request for a contested case hearing on Application 14-1318C that fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. As an initial matter, Mr. Schwartz' hearing request is based on water rights for which he has no ascertainable interest. Specifically, his request is based on purported impacts to Certificate of Adjudication No. 14-1351. TCEQ records indicate that Kenneth Schwartz, not Kent C. Schwartz, holds Certificate of Adjudication No. 14-1351. Based on the requests submitted under each name, it appears that Kent C. Schwartz and Kenneth Schwartz are not the same person. Accordingly, it is apparent that Kent C. Schwartz has no justiciable interest in Certificate of Adjudication No. 14-1351 that is affected by the Application.

Notwithstanding this substantial defect in his request, Mr. Schwartz failed to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code for other reasons, as well. Mr. Schwartz provides no daytime telephone number in his request, as is required by Subsection (c)(1). More significantly, he fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Mr. Schwartz has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Kent C. Schwartz's request should not be granted.

27. Todd Schwertner

Todd Schwertner submitted a request for a contested case hearing on Application 14-1318C that fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Todd Schwertner in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1370. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Todd Schwertner's request should not be granted.

28. Ben O. Sims

Ben O. Sims submitted a request for a contested case hearing on Application 14-1318C that also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, Mr. Sims provides no daytime telephone number in his request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Mr. Sims' domestic and livestock riparian rights. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Ben O. Sims' request should not be granted.

29. N. L. and Gordon Snodgrass

N. L. and Gordon Snodgrass submitted a request for a contested case hearing on Application 14-1318C that fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, N. L. and Gordon Snodgrass provide nothing in their request that gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1328—the certificate referenced in his request as being the affected water right. They simply identify no justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

N. L. and Gordon Snodgrass's request should not be granted.

30. M. C. Vinson Trust

David Vinson submitted a request for a contested case hearing on Application 14-1318C purportedly on behalf of the M. C. Vinson Trust. Nothing in the request, however, indicates that David Vinson is authorized to act, or speak, on behalf of the M. C. Vinson Trust. Furthermore, the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-3612—is not a valid Concho Segment certificate of adjudication number. It is simply unclear what, if any, interests David Vinson can speak to that are relevant to the Application, regardless of whether he is authorized to speak on behalf of the M. C. Vinson Trust.

Furthermore, his request fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code for other reasons. As noted above, it contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The M. C. Vinson Trust's request should not be granted.

31. Vinson Ranch, Ltd.

Vinson Ranch, Ltd. submitted a request for a contested case hearing on Application 14-1318C that fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Vinson Ranch, Ltd. in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1385. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Vinson Ranch, Ltd.'s request should not be granted.

32. Clyde C. Watkins

Clyde C. Watkins submitted three requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on July 15, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

Nevertheless, all three requests fail to substantially comply with or satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code for multiple reasons. As an initial matter, Mr. Watkins submitted hearing requests based on a water right for which he has no ascertainable interest. Specifically, his request is based on purported affects to Certificates of Adjudication No. 14-1336 and 14-1357. Certificate of Adjudication No. 14-1357, however, is owned by the City of San Angelo. Mr. Watkins simply has no interest to claim in Certificate of Adjudication No. 14-1357.

Furthermore, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the

requestor, nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1336. His requests are devoid of any identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Clyde C. Watkins' requests should not be granted.

33. Edward E. Werner

Edward E. Werner submitted two requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on July 10, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

Regardless of the lack of timeliness of his July 10, 2005 request, neither request submitted by Mr. Werner satisfies the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, Mr. Werner's hearing requests are based on water rights for which he has no ascertainable interest. His request is based on purported affects to Certificate of Adjudication No. 14-1352. However, TCEQ records indicate that Certificate of Adjudication No. 14-1352 is owned by Ricky Dale Werner. Nothing in Edward E. Werner's hearing request indicates any authority to speak on behalf of Ricky Dale Werner or otherwise claim an interest in Certificate of Adjudication No. 14-1352.

Furthermore, Mr. Werner fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in his requests gives any indication of how, or why, the Application will affect any interest owned by Mr. Werner. He has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Edward E. Werner's requests should not be granted.

34. Ben A. Willberg

Jennifer A. and Steven H. Hoelscher submitted two requests for a contested case hearing on Application 14-1318C purportedly on behalf of Ben A. Willberg—one request was received by the Chief Clerk on July 20, 2005, and the other was received on September 29, 2005. Nothing in the requests, however, indicates that Jennifer Hoelscher or Steven Hoelscher are authorized to act, or speak, on behalf of Ben A. Willberg. TCEQ records

indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1384—is held in the name of Ben A. Willberg, not Jennifer Hoelscher or Steven Hoelscher. Accordingly, it is not clear either has the appropriate capacity to submit a request for a contested case hearing on behalf of Ben A. Willberg. Furthermore, with respect to the request submitted on July 20, 2005, pursuant to Title 30, Section 55.251 of the Texas Administrative Code, it must have been received by the Chief Clerk between September 2, 2005 and October 3, 2005, or, alternatively, between April 28, 2006 and May 30, 2006, to be considered a valid request. Accordingly, this request is untimely.

Ben A. Willberg, himself, submitted three requests for a contested case hearing on Application 14-1318C. All five requests submitted by Ben A. Willberg, or purportedly on behalf of Ben A. Willberg, nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in any of these requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1384, or any domestic and livestock riparian right enjoyed by Ben A. Willberg. The requests each fail to identify any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Ben A. Willberg's requests should not be granted.

35. Kenneth Windham

Kenneth Windham submitted three requests for a contested case hearing on Application 14-1318C. One request was received by the Chief Clerk on July 20, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, it must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered a valid request. Accordingly, this request is untimely.

Despite the lack of timeliness of his July 20, 2005 request, all requests filed by Kenneth Windham fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1368. Mr. Windham has failed to identify any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Kenneth Windham's requests should not be granted.

36. Milburn Wright

Milburn Wright submitted two requests for a contested case hearing on Application 14-1318C. One request does not have an ascertainable file stamp from the Chief Clerk, but was received by OPA on July 22, 2005. This means that the request likely was submitted to the Chief Clerk between July 19, 2005 and July 21, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, the request must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered a valid request. Accordingly, this request appears to be untimely.

Furthermore, each of Mr. Wright's hearing requests are based on a water right for which he has no ascertainable interest. His requests are based on purported affects to Certificate of Adjudication No. 14-1360. However, TCEQ records indicate that Certificate of Adjudication No. 14-1360 is owned by Jerrilyn W. Jones and Joyce Ann Moore. Nothing in Milburn Wright's hearing requests indicates any authority to speak on behalf of Jerrilyn W. Jones or Joyce Ann Moore, or to otherwise claim an interest in Certificate of Adjudication No. 14-1360.

Regardless, Mr. Wright does not even attempt to provide any indication of how, or why, the Application will affect any interest, including Certificate of Adjudication No. 13-1360. Mr. Wright has failed to identify any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Milburn Wright's requests should not be granted.

37. Melburne Wright, Sr.

Melburne Wright, Sr. submitted a request for a contested case hearing on Application 14-1318C. As was the case with Wilburn Wright's hearing requests, Melburne Wright, Sr.'s hearing request is also based on purported affects to Certificate of Adjudication No. 14-1360—a right that TCEQ records indicate is owned by Jerrilyn W. Jones and Joyce Ann Moore. Nothing in Melburne Wright, Sr.'s hearing request indicates any authority to speak on behalf of Jerrilyn W. Jones or Joyce Ann Moore, or to otherwise claim an interest in Certificate of Adjudication No. 14-1360.

Furthermore, Melburne Wright, Sr.'s hearing request otherwise fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. The request contains no indication of how, or why, the Application will affect any interest of Mr. Wright's. He simply has failed to identify any justiciable interest that is affected by

the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Melburne Wright, Sr.'s request should not be granted.

38. Concho River Basin Water Conservancy Association

The Concho River Basin Water Conservancy Association (the "Association"), through A. J. Jones, Jr., submitted five requests for a contested case hearing on Application 14-1318C. As an initial matter, the Association has not provided any demonstration that it is, in fact, a legitimate organization comprised of any members, and particularly those members it purports to speak on behalf of in its hearing requests. It is important to understand whether, in fact, any of its purported members are in fact members of the Association, and most importantly, were in fact members at the time that the Association submitted its hearing requests.

Additionally, an association may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. Section 55.252(a) requires that, for the Association to have standing to request a contested case hearing, one or more of its members must otherwise have standing to request such a hearing on their own right.²⁸ The Association lists 22 distinct certificates of adjudication in the Concho River Basin that it claims are rights held by its members, who thus have justiciable interests that are purportedly affected by the Application. Of this group, only 14 certificates of adjudication are represented in the independent requests submitted by others requesting a contested case hearing on Application 14-1318C. Therefore, there is no indication at all that the owners of Certificates of Adjudication No. 14-1338, 14-1339, 14-1341, 14-1345, 14-1346, 14-1353, 14-1362 or 14-1363 are in fact members of the Association and would otherwise have standing to request a hearing on their own right, as required by TCEQ rules.²⁹ Thus, with respect to the purported members of the Association that hold these water rights, the Association cannot rely on any of them as the basis for standing to make its requests.

With respect to the holders of the 14 remaining water rights that are represented by requests independently submitted on the Application, not one of those requests meets the substantive requirements of Title 30, Section 55.250 of the Texas Administrative Code. To be clear, not one single requestor who claimed an interest in any of the 22 certificates of adjudication listed by the Association was able to show a justiciable interest affected by the Application. As a consequence, because the Association has failed to demonstrate that any of its purported members would otherwise have standing to request a hearing on Application 14-1318C in their own right, it has no standing under Title 30, Section

²⁸ 30 TEX. ADMIN. CODE § 55.252(a)(1) (2009).

²⁹ *Id.*

55.252(a)(1) of the Texas Administrative Code to request a hearing on the Application, either.

Section 55.252(a) also requires that the Association demonstrate that the interests it seeks to protect in its requests are germane to the organization's purpose.³⁰ The Association has made no such demonstration. In addition to its substantive failures in establishing standing discussed above, it also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

The third requirement that the Association must meet to demonstrate the requisite standing to make its hearing requests is that neither the claim it asserts, nor the relief it requests, requires the participation of its purported individual members listed.³¹ The Association has made no such demonstration. In fact, the statements made in the hearing requests submitted by its purported members belie any argument that the Association may make that it does not need to prove the individual circumstances of its members to obtain the relief it seeks in the requested hearing.³² Because the Association is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any of its purported individual members, it also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

With respect to the Association's hearing requests, of the five requests submitted, three were submitted prematurely. The first request was received by the Chief Clerk on May 6, 2005. The second request was received by OPA on May 10, 2005. There is no clear indication on the request itself when, or whether, this request was received by the Chief Clerk, but it presumably would have been received somewhere between May 7, 2005 and May 9, 2005. The third request was received by the Chief Clerk on May 10, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, these requests must have been received by the Chief Clerk following the Chief Clerk's issuance of mailed notice on August 25, 2005 and not later than October 3, 2005 to be considered valid requests. Accordingly, these requests are each untimely.

The Association also sent requests for a hearing on Application 14-1318C that were received by the Chief Clerk on September 12, 2005, and May 18, 2006, respectively. While these two requests appear to have been timely submitted, they each nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

³⁰ *Id.* § 55.252(a)(2).

³¹ *Id.* § 55.252(a)(3).

³² *See Tex. Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993) (recognizing that the third prong of the associational standing requirement is met only where the association seeks "prospective relief, raises only issues of law," and is without the need to "prove the individual circumstances [of its members] to obtain relief").

Since it is not entirely clear which issues A. J. Jones, Jr. raised on his own behalf, and those he raised on behalf of the Association, San Angelo will treat each issue raised by Mr. Jones as a basis for the contested case hearing as issues raised by the Association, as well. Accordingly, in the request that was received by the Chief Clerk on September 12, 2005, the Association provides no indication of how, or why, the Application will affect the water rights or domestic and livestock riparian rights that it, or any of its members, hold. Instead of describing briefly, but specifically, how the change proposed in the Application will impair its members' water rights, the Association complains about the use of water from Lake Nasworthy Reservoir. Even then, it provides no indication regarding why it is concerned about the supposed impacts the Application would have on Lake Nasworthy Reservoir, nor how those supposed impacts would adversely affect the Association. In addition, it complains about the absence of the storm and flood flows provision that originally appeared in San Angelo's Permit No. 1949. But, as discussed above in detail, this provision was appropriately abandoned in COA 14-1318 because of the legal changes brought about by the 1967 Act. On this point, the Association's concern is but a pure question of law—one resolved many years ago, first by the Texas Legislature,³³ then by the TWRC as it carried out the Legislature's command to merge riparian rights into the prior appropriation method of surface water rights management.³⁴

In the same request, the Association references other correspondence that it previously submitted to TCEQ, and it asks us to consider its comments in those letters, as well. Specifically, the Association appears to be referencing a letter dated May 6, 2005, which was apparently sent to the Chief Clerk in triplicate. These are the three untimely letters submitted in May 2005 that are discussed in the beginning paragraph to this response to the Association's hearing requests. The Association refers us also to a letter dated July 1, 2005 that was received by the Chief Clerk on five separate occasions: July 5, 2005, July 7, 2005, July 11, 2005, September 12, 2005, and again on September 12, 2005. This particular letter was, by its express terms, drafted to be a hearing request for a different permit amendment application—not Application 14-1318C. None of these eight pieces of correspondence would appear to be validly presented to the Commission as requests for a contested case hearing on this Application. Regardless, not one of the letters would, on its own right, satisfy the requirements of Title 30, Section 55.251 of the Texas Administrative Code.

Specifically, in its correspondence dated May 6, 2005, the Association provides no explanation whatsoever as to how the Application would impair any of its water rights or any domestic and livestock riparian rights, or those of its members. The Association, thus, describes no justiciable interest that is affected by the Application.

As is the case with its May 6, 2005 correspondence, the Association's July 1, 2005 correspondence fails to convey any information that would suggest how and why it, or its members, would be impacted by the change sought in Application 14-1318C. In the

³³ *Guadalupe River Basin*, 642 S.W.2d at 439-45.

³⁴ Modified Commission Order on Concho River Claims

letter, it raises five distinct issues—all of which address its purported concern for the change sought in the application that is the subject of TCEQ Docket No. 2008-1616-WR—not this Application. The Association's comments in its July 1, 2005 letter were addressing a different application entirely. Thus, they provide no additional insight into how and why the change proposed in Application 14-1318C will affect any justiciable interest it may have. In the letter, it suggests that its members' downstream senior water rights give them a right to the impounded waters in Twin Buttes Reservoir. It goes on to complain that changes proposed by San Angelo will interfere with its members' abilities to rely on stored water to satisfy their demands. The Association's concern here is wholly irrelevant for multiple reasons. First, the Application proposes no change that would alter the classification of waters rightfully diverted and stored in Twin Buttes Reservoir pursuant to the rights provided in COA 14-1318. Second, the Association has apparently been misinformed about the scope of the purported rights of its members. Nothing in its members' water rights or any domestic and livestock riparian rights they may enjoy, gives them a right to water that has been rightfully diverted and stored in Twin Buttes Reservoir. Absent a clear, expressly granted right, the Association can have no members that are able to claim any right under Texas law to the water rightfully diverted and stored by San Angelo in Twin Buttes Reservoir. The Association has articulated no justiciable interest in this point that is affected by the Application, and thus has not met the requirement of the Commission's rules related to hearing requests.³⁵

The Association next complains about the storage of released water from Twin Buttes Reservoir into Lake Nasworthy Reservoir, also owned by San Angelo. Nothing in Application 14-1318C proposes any alteration of San Angelo's legal rights or obligations relating to released water from Twin Buttes Reservoir. The Association has articulated no justiciable interest in this point that is affected by the Application.³⁶

The Association's third point again is but another grievance relating to the management of water impounded in Lake Nasworthy Reservoir. San Angelo does not propose any change in Application 14-1318C that would alter how diverted and impounded water is managed in Lake Nasworthy Reservoir. The Association has failed to articulate any justiciable interest here that is affected by the Application.³⁷

In its fourth point, the Association addresses the matter of changing the inlet structure elevation referenced in COA 14-1318. That change, of course, is sought in the application that is the subject of TCEQ Docket No. 2008-1616-WR, not this Application. Therefore, it has no relevance in the context of Application 14-1318C. Nevertheless, while it complains that the proposed change will affect its members and other downstream senior and superior water rights holders, it provides no explanation of how or why its members will be affected by the requested change on paper (correcting the inlet structure elevation in COA 14-1318 to reflect the as-built elevation). The inlet

³⁵ 30 TEX. ADMIN. CODE § 55.251(c)(2) (2009).

³⁶ *Id.*

³⁷ *Id.*

structure elevation has been at the same elevation for at least 46 years, and nothing in Application 14-1318C proposes to change that fact. Additionally, the Association wholly ignores the role that the Watermaster plays in ensuring that its members and other downstream senior and superior water right holders' ability is protected to beneficially use water to which they are entitled. Given the important role of the Watermaster on the Concho River, and the fact that nothing in Application 14-1318C would change what has been the case for almost one-half century, it is far from clear how the Association's members have any right that is affected by the Application. Accordingly, the Association has failed to articulate with this point any justiciable interest that is affected by the Application.³⁸

The Association's fifth concern also has no relevance in Application 14-1318C. San Angelo does not request in this Application an additional diversion point. The Association has articulated no justiciable interest that is affected by the Application.³⁹

In none of its requests has the Association briefly or specifically described how and why the change proposed in the Application 14-1318C will affect its justiciable interest or those of any of its members, as it is clearly required to show pursuant to Title 30, Section 55.251(c)(2) of the Texas Administrative Code. Its requests, though prolific in number, wholly fail to identify any justiciable interest affected by the Application.⁴⁰ As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Concho River Basin Water Conservancy Association's requests should not be granted.

V. CONCLUSION

For too many years, Texas struggled with ways to find accommodation between riparian rights and prior appropriation. The result, even in light of the advent of the *Motl* distinction, was chaos.⁴¹ Simply stated, even when it had applicability in the law, the "normal flows" standard developed by the *Motl* Court "was amorphous," and was never one that had any true legal or scientific meaning.⁴² With the Texas Legislature's adoption of the 1967 Act, the State was finally freed from having to depend on such innocuous, and ineffective, *Motl* distinctions. Despite the fact that COA 14-1318 was a product of the adjudication process created by the 1967 Act, where

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Guadalupe River Basin*, 642 S.W.2d at 439 (recognizing that "[w]ater law in Texas was in a chaotic state prior to the enactment of the Water Rights Adjudication Act in 1967").


⁴² *Id.* at 441.

the TWRC recognized the "difficult engineering problem" created by parsing out normal flows from storm and flood flows,⁴³ the normal flows provision was left in. Thus, San Angelo filed this Application to amend COA 14-1318.

Pursuant to Title 30, Section 55.255(a)(1) of the Texas Administrative Code, because none of the requestors have demonstrated that they are "affected persons" under the standards articulated in Subchapter G, San Angelo respectfully requests that their hearing requests each be denied and that the Application be granted.

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⁴³ Modified Final Concho Determination, ¶ 11, at 8.

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of August, 2009, a true and correct copy of the foregoing was sent via first-class mail, electronic mail, facsimile, or hand-delivery to the following persons, including the persons on the attached Requestors list:

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